

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP (BASIN 40A)
PRELIMINARY DECREE

CLAIMANTS: C Bar J Ranch LLC; M&W Ranch LLC;
McFarland White Ranch Inc.

CASE40A-0617-R-2023
40A 205268-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claim 40A 205268-00 appeared in the Preliminary Decree for the Musselshell River above Roundup (Basin 40A) issued on June 7, 2017. The claim is co-owned by C

Bar J Ranch, LLC, M&W Ranch LLC, and McFarland White Ranch Inc. The claim did not receive objections, counterobjections, or notices of intent to appear but did receive an issue remark. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

FINDINGS OF FACT

1. Claim 40A 205268-00 appeared in the Basin 40A Preliminary Decree as a claim for flood irrigation that diverts water from Big Elk Creek via a headgate in the SWSWSW of Section 23, T6N, R12E, Wheatland County.

2. The claim received the following issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SESESE SEC 22 TWP 6N RGE 12E WHEATLAND COUNTY.

3. The Court ordered the parties to file evidence describing the historically accurate location of the claimed headgate. The order stated that “[i]f nothing is filed by the deadline, the point of diversion will be corrected to the SESESE of Section 22, T6N, R12E, Wheatland County.”

4. On April 14, 2023, Claimants M&W Ranch LLC and McFarland White Ranch Inc. (McFarland) filed a statement regarding the issue remark. (Doc.¹ 4.00).

5. McFarland’s statement says the issue remark is correct, and the historical location of the point of diversion is in the SESESE of Section 22, T6N, R12E.

6. Nothing was filed by C Bar J Ranch LLC.

7. The SESESE of Section 22 is directly across the section line from the SWSWSW of Section 23. The claimed source is in the SESESE of Section 22, not the SWSWSW of Section 23.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSION OF LAW

1. The point of diversion issue remark overcomes the prima facie status of claim 40A 205268-00. The evidence shows by a preponderance of the evidence that the historically accurate location of the claimed headgate is in the SESESE of Section 22, T6N, R12E, Wheatland County.

RECOMMENDATIONS

1. Claim 40A 205268-00 should be modified as described above.
2. The issue remark should be removed from claim 40A 205268-00.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

C Bar J Ranch LLC
PO Box 224
Two Dot, MT 59085

Last Order:

*M&W Ranch LLC
McFarland White Ranch Inc
PO Box 235
Two Dot, MT 59085
406-632-4121 H
406-220-4868 c
twodottech@outlook.com*

Service via Electronic Mail

**John E. Bloomquist
Betsy R. Story
Parsons Behle & Latimer
3355 Colton Drive, Suite A
Helena, MT 59602
(406) 410-5050
ecf@parsonsbehle.com
jbloomquist@parsonsbehle.com
bstory@parsonsbehle.com**

Notice: Service List Updated 4.18.23

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 205268-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: MCFARLAND WHITE RANCH INC
PO BOX 235
TWO DOT, MT 59085 0235

C BAR J RANCH LLC
PO BOX 224
TWO DOT, MT 59085 0224

M&W RANCH LLC
PO BOX 235
TWO DOT, MT 59085 0235

***Priority Date:** JULY 1, 1911

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 15.43 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 732.10

Source Name: BIG ELK CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESESE	22	6N	12E	WHEATLAND

***Period of Diversion:** MAY 20 TO JULY 19

Diversion Means: HEADGATE

Ditch Name: HILINE DITCH

CROOKED CREEK IS USED AS A NATURAL CARRIER TO DELIVER WATER FROM HILINE DITCH.

Period of Use: MAY 20 TO JULY 19

RIGHT IS LIMITED TO HIGH OR FLOOD WATERS OF BIG ELK CREEK.

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	32.60		N2NW	2	6N	13E	WHEATLAND
2	249.30		N2	3	6N	13E	WHEATLAND

3	55.40	N2W2S2	3	6N	13E	WHEATLAND
4	3.24	NENE	4	6N	13E	WHEATLAND
5	61.82	SENE	4	6N	13E	WHEATLAND
6	23.90	SWNE	4	6N	13E	WHEATLAND
7	16.29	NESE	4	6N	13E	WHEATLAND
8	26.85	NWSE	4	6N	13E	WHEATLAND
9	17.70	NESW	4	6N	13E	WHEATLAND
10	27.00	E2E2	25	7N	13E	WHEATLAND
11	3.00	W2SE	19	7N	14E	WHEATLAND
12	138.00	W2	19	7N	14E	WHEATLAND
13	76.00	NW	30	7N	14E	WHEATLAND
14	1.00	NWNESW	30	7N	14E	WHEATLAND
Total:						732.10

Remarks:

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION:
"FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL
BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE
DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S
CLAIM FILES.

THE STIPULATION FILED ON FEBRUARY 14, 1997 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION:
THE OWNER(S) OF 40A 205268-00 MAY DIVERT ADDITIONAL WATER AT THE POINT OF DIVERSION LISTED
ABOVE IN EXCESS OF THAT AVAILABLE IN ORDER OF PRIORITY FOR THIS RIGHT, IN WHICH EVENT, THE
OWNERS(S) OF THIS WATER RIGHT SHALL RELEASE AN EQUIVALENT FLOW FROM THE RESERVOIR
ASSOCIATED WITH 40A 205260-00 OR 40A 198487-00. THIS RELEASED WATER SHALL BE AVAILABLE FOR
DIVERSION, IN ORDER OF PRIORITY, TO ANY WATER RIGHT BELOW SAID RESERVOIR.